

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 25, 2014

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Principal coauthor: Assembly Member Rodriguez)
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend Sections 1569.35 and 1569.37 of, and to add Section 1569.25 to, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Skinner. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services and makes a violation of those provisions a crime. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill would make various changes to this complaint procedure, including prohibiting the department from giving a licensee advance notice of an investigation regarding a complaint and requiring the

department to ~~make~~ *conduct* an onsite ~~inspection~~ *investigation* within 24 hours of receiving a complaint ~~where if~~ the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would require the department to conduct investigations in the manner required to ensure maximum effectiveness while respecting the rights of residents and to complete an investigation, *except as specified*, within 90 days of receiving a complaint, or within 30 days where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would prohibit a licensee, or officer or employee of the licensee, from interfering with or obstructing an investigation ~~or onsite inspection~~ conducted pursuant to these provisions and would require the department to assess an immediate civil penalty of \$1,000 per day per violation for violations of that prohibition. Because a violation of this prohibition would also be a crime, the bill would impose a state-mandated local program. The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

~~The bill would also specify that the names of any persons contained in the records of the department in connection with the California Residential Care Facilities for the Elderly Act are exempt from public disclosure, except for the names of the officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed under the act.~~

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to ensure that a licensee complies with that provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1569.25 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~1569.25. The names of any persons contained in the records~~
4 ~~received, owned, used, or retained by the department in connection~~
5 ~~with the provisions of this chapter, except the names of duly~~
6 ~~authorized officers, employees, or agents of the department~~
7 ~~conducting an investigation or inspection in response to a complaint~~
8 ~~filed pursuant to this chapter, shall be exempt from disclosure~~
9 ~~under the California Public Records Act (Chapter 3.5 (commencing~~
10 ~~with Section 6250) of Division 7 of Title 1 of the Government~~
11 ~~Code) and copies of the records provided for public inspection~~
12 ~~shall have those names deleted.~~

13 ~~SEC. 2.~~

14 ~~SECTION 1.~~ Section 1569.35 of the Health and Safety Code
15 is amended to read:

16 1569.35. (a) A person may request an investigation of a
17 residential care facility for the elderly in accordance with this
18 chapter by making a complaint to the department alleging a
19 violation of applicable requirements prescribed by statutes or
20 regulations of this state. A complaint may be made either orally
21 or orally, in writing, or electronically.

22 (b) (1) Upon receipt of a complaint, the department shall make
23 a preliminary review. Within two working days of receiving the
24 complaint, the department shall notify the complainant of the name
25 of the officer, employee, or agent of the department who will
26 conduct the investigation. Unless the department determines that
27 the complaint is willfully intended to harass a licensee or is without
28 any reasonable basis, it shall make an onsite inspection
29 investigation within 10 days after receiving the complaint.

30 (2) Notwithstanding paragraph (1), when if a complaint alleges
31 abuse, neglect, or a threat of imminent danger of death or serious
32 harm, the department shall make conduct an onsite inspection
33 investigation within 24 hours of the receipt of the complaint.

34 (3) Notwithstanding paragraph (1), when a complaint alleges if
35 a local long-term care ombudsman or the State Long-Term Care

1 *Ombudsman files a complaint alleging* denial of a statutory right
2 of access to a residential care facility for the elderly under Section
3 9722 of the Welfare and Institutions Code, the department shall
4 ~~immediately review the complaint,~~ *give priority to the complaint,*
5 *as required pursuant to Section 9721 of the Welfare and Institutions*
6 *Code, and confer with the Office of the State Long-Term Care*
7 ~~Ombudsman, and notify the complainant of the department's~~
8 ~~proposed course of action~~ *Ombudsman in the investigation.*

9 (4) Prior to conducting an onsite ~~inspection~~ *investigation*
10 pursuant to this section, the officer, employee, or agent of the
11 department who will conduct the ~~inspection~~ *investigation* shall
12 contact and interview the complainant and inform the complainant
13 of the department's proposed course of action.

14 (c) The department shall coordinate its investigation of a
15 residential care facility for the elderly under this section with the
16 investigation of the facility by other agencies, including, but not
17 limited to, the Office of the State Long-Term Care Ombudsman
18 and law enforcement agencies. *Nothing in this subdivision shall*
19 *be construed to limit the department's ability to temporarily*
20 *suspend an investigation if requested to do so by a law enforcement*
21 *agency because the investigation would adversely affect an active*
22 *criminal investigation. The department shall maintain written*
23 *documentation of the law enforcement request and continue to*
24 *ensure the safety of all residents. The department shall immediately*
25 *resume any investigation that is suspended pursuant to this*
26 *subdivision upon consent of law enforcement or completion of the*
27 *criminal investigation.*

28 (d) The department shall not give a licensee advance notice of
29 an investigation conducted pursuant to this section. The substance
30 of the complaint shall be provided to the licensee no earlier than
31 at the time of the onsite ~~inspection~~ *investigation*. Unless the
32 complainant specifically requests that his or her own name is
33 released, neither the substance of the complaint provided to the
34 licensee, nor any copy of the complaint or any record published,
35 released, or otherwise made available to the licensee shall disclose
36 the name of the complainant ~~or the name of any person mentioned~~
37 ~~in the complaint,~~ except the name of a duly authorized officer,
38 employee, or agent of the department conducting the investigation
39 ~~or inspection~~ pursuant to this chapter.

1 (e) The department shall conduct investigations under this
2 section in the manner required to ensure maximum effectiveness
3 while respecting the rights of residents.

4 (f) A licensee, or officer or employee of the licensee, shall not
5 interfere with or obstruct an investigation ~~or onsite inspection~~
6 conducted pursuant to this section. The department shall assess an
7 immediate civil penalty of one thousand dollars (\$1,000) per day
8 per violation for violations of this subdivision. In addition to
9 assessing that penalty, the department may take any other
10 enforcement actions authorized by this chapter for violations of
11 this subdivision.

12 (g) When conducting an ~~onsite inspection~~ *investigation* pursuant
13 to this section, the department shall interview any residents who
14 are the subject of the complaint. Additionally, the officer,
15 employee, or agent of the department conducting the ~~inspection~~
16 *investigation* shall collect and evaluate all available evidence,
17 including, but not limited to, all of the following:

18 (1) Observed conditions.

19 (2) Statements of witnesses.

20 (3) Interviews with administration, staff, other residents, family
21 members, visitors, the long-term care ombudsman, and other
22 individuals or agencies that provide services at the facility ~~or who~~
23 *may* have information about the complaint.

24 (4) Records from the facility and any other relevant sources.

25 (h) The department shall complete its investigation within 90
26 days of receiving the complaint. Investigation of a complaint
27 alleging abuse, neglect, or a threat of imminent danger of death or
28 serious harm shall be completed within 30 days of receiving the
29 complaint. *In cases in which the department has temporarily*
30 *suspended an investigation pursuant to subdivision (c), the*
31 *department may extend the investigation beyond the 90-day*
32 *requirement and shall notify the complainant within 48 hours that*
33 *the investigation has been temporarily suspended and why it has*
34 *been temporarily suspended, and provide an estimate of when the*
35 *investigation will be completed.*

36 (i) Within 10 days of completing the investigation of a complaint
37 under this section, the department shall notify the complainant in
38 writing of the department's determination as a result of the
39 investigation and of the complainant's right to appeal the findings.
40 The written notice shall describe the appeal process provided for

1 under subdivision (j) and include a copy of any reports and
2 documents describing violations and enforcement actions resulting
3 from the investigation.

4 (j) (1) A complainant who is dissatisfied with the department's
5 investigation, findings, or enforcement actions resulting from the
6 investigation may file an appeal by notifying the program manager
7 of the officer, employee, or agent of the department conducting
8 the ~~inspection~~ investigation in writing within 15 days after
9 receiving the notice described in subdivision (i). The program
10 manager shall schedule a meeting or teleconference with the
11 complainant within 30 days of receiving an appeal. The program
12 manager shall carefully review the concerns, information, and
13 evidence presented by the complainant to determine whether the
14 department's findings or actions should be modified or whether
15 further investigation is necessary. Within 10 days after conducting
16 the meeting or teleconference with the complainant, the program
17 manager shall notify the complainant in writing of the department's
18 determinations and actions concerning the appeal and of the appeal
19 rights provided in paragraph (2).

20 (2) If a complainant is dissatisfied with the program manager's
21 determination on an appeal, the complainant may, within 15 days
22 after receipt of this determination, file an appeal in writing with
23 the department's Deputy Director of the Community Care
24 Licensing Division. Within 30 days of receiving an appeal, the
25 deputy director or his or her designee shall interview the
26 complainant, consider any information presented or submitted by
27 the complainant, and review the complaint record to determine
28 whether the department's findings or actions should be modified
29 or whether further investigation is necessary. No later than 10 days
30 after completing this review, the deputy director shall notify the
31 complainant in writing of the department's determinations and
32 actions concerning the appeal.

33 (3) A complainant may be assisted or represented by any person
34 of his or her choice in the appeal process described in this
35 subdivision.

36 ~~SEC. 3.~~

37 *SEC. 2.* Section 1569.37 of the Health and Safety Code is
38 amended to read:

39 1569.37. (a) No licensee, or officer or employee of the licensee,
40 shall discriminate or retaliate in any manner, including, but not

1 limited to, eviction or threat of eviction, against any person
2 receiving the services of the licensee's residential care facility for
3 the elderly, or against any employee of the licensee's facility, on
4 the basis, or for the reason that, the person or employee or any
5 other person has initiated or participated in the filing of a
6 complaint, grievance, or a request for investigation with the
7 department pursuant to this chapter, or has initiated or participated
8 in the filing of a complaint, grievance, or request for investigation
9 with the appropriate local ombudsman, or with the state
10 ombudsman recognized pursuant to Chapter 11 (commencing with
11 Section 9700) of Division 8.5 of the Welfare and Institutions Code.

12 (b) The department shall ensure that a licensee or officer or
13 employee of the licensee complies with subdivision (a).

14 ~~SEC. 4. The Legislature finds and declares that Section 1 of~~
15 ~~this act, which adds Section 1569.25 to the Health and Safety Code,~~
16 ~~imposes a limitation on the public's right of access to the meetings~~
17 ~~of public bodies or the writings of public officials and agencies~~
18 ~~within the meaning of Section 3 of Article I of the California~~
19 ~~Constitution. Pursuant to that constitutional provision, the~~
20 ~~Legislature makes the following findings to demonstrate the interest~~
21 ~~protected by this limitation and the need for protecting that interest:~~

22 ~~In order to protect the identity of individual residents and~~
23 ~~employees of residential care facilities for the elderly, the~~
24 ~~limitations on the public's right of access imposed by Section 1~~
25 ~~of this act are necessary.~~

26 ~~SEC. 5:~~

27 *SEC. 3.* No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.